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Ex-NFL Player Fights To Keep ERISA Suit In Play

By **Adam Lidgett**

Law360 (October 31, 2018, 6:13 PM EDT) -- A former NFL player is urging a New York federal court not to spike his Employee Retirement Income Security Act suit claiming players weren't properly informed about their retirement benefits, arguing the NFL players union and other defendants are trying to "rewrite" his allegations.

Christopher Hudson hit back Tuesday at dismissal bids from the NFL Players Association, the NFL Management Council and the retirement board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan, saying he had sufficiently backed up his claims and that his suit should stay in court.

"The fundamental flaws with defendants' motions

are that they attempt to apply an incorrect standard on a motion to dismiss, attempt to rewrite the allegations of the complaint, and improperly to draw inferences in their favor and against plaintiff,” Hudson said in his opposition brief. “Contrary to defendants’ mischaracterizations of the complaint, it more than adequately sets forth factual allegations that support the legal claims.”

Hudson, who played for the Jacksonville Jaguars, the Chicago Bears and the Atlanta Falcons, filed his suit on behalf of a proposed class of players who filed claims before Jan. 1, 2015, seeking total disability benefits. The class could number in the hundreds or thousands, according to his May complaint.

Specifically, he alleged that players weren’t told about the dangers of trying to get benefits without having a clear diagnosis first or retaining an attorney. Additionally, he said the defendants didn’t disclose certain plan interpretations they adopted, and that said interpretations flew in the face of what was written in the summary plan descriptions.

Those summary plan descriptions weren’t written in a way where participants would be reasonably informed of their rights, according to Hudson, who also said that adequate disclosures weren’t made to plan participants regarding benefits and that the NFL Management Council and NFL Players

Association failed to adequately monitor the board.

The defendants all sought dismissal in late August, with the board saying Hudson is attempting to unseat the board and bar both the players union and management council from exercising their ability to change or drop the benefits.

Ex-NFL players have sued over benefits denials before.

In March, a California federal judge ordered the board in a separate case to re-evaluate former NFL cornerback Charles Dimry's permanent disability benefits application. And in another case, a Fourth Circuit panel in June 2017 sided with former NFL linebacker Jesse Solomon, who had sought higher disability benefits from the league's plan for cognitive impairments resulting from head injuries.

An attorney for Hudson said he didn't have anything to add beyond the brief.

Representatives for the other parties didn't immediately respond to requests for comment Wednesday.

Hudson is represented by Robert I. Harwood and Daniella Quitt of Glancy Prongay & Murray LLP, Robert A. Donati and William B. Ryan of Donati Law PLLC, and R. Joseph Barton of Block & Leviton

LLP.

The retirement board of the Bert Bell/Pete Rozelle NFL Player Retirement Plan is represented by Michael L. Junk and Michael J. Prame of the Groom Law Group Chtd., and Brian Laurence Bank and Jacqueline Mecchella Bushwack of Rivkin Radler LLP.

The NFL Management Council is represented by M. Christine Slavik, Stacey R. Eisenstein and Eric D. Field of Akin Gump Strauss Hauer & Feld LLP.

The NFL Players Association is represented by William G. Miossi, Mary M. Lenahan, Paul N. Harold and Jeffrey L. Kessler of Winston & Strawn LLP.

The case is Hudson v. National Football League Management Council et al., case number 1:18-cv-04483, in the U.S. District for the Southern District of New York.

--Additional reporting by Danielle Nichole Smith, Adam Rhodes and Matthew Perlman. Editing by Aaron Pelc.

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